

APPEAL NO. 030911
FILED JUNE 4, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on February 24, 2003. The hearing officer resolved the disputed issue by deciding that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the first quarter. The claimant appealed, and the respondent (self-insured) responded.

DECISION

Affirmed.

Eligibility criteria for SIBs entitlement are set forth in Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102). The SIBs criteria in issue are whether the claimant made a good faith effort to obtain employment commensurate with her ability to work during the qualifying period for the first quarter and whether the claimant earned less than 80% of her average weekly wage (AWW) as a direct result of the impairment from the compensable injury during the qualifying period for the first quarter. The claimant contends that she had no ability to work during the qualifying period for the first quarter. It is undisputed that the claimant did not work or look for work during the qualifying period for the first quarter.

Rule 130.102(d)(4) provides that an injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee has been unable to perform any type of work in any capacity, has provided a narrative report from a doctor which specifically explains how the injury causes a total inability to work, and no other records show that the injured employee is able to return to work. Rule 130.102(e) provides in part that, except as provided in subsection (d)(1), (2), (3), and (4) of Rule 130.102, an injured employee who has not returned to work and is able to return to work in any capacity shall look for employment commensurate with his or her ability to work every week of the qualifying period and document his or her job search efforts. Rule 130.102(c) provides that an injured employee has earned less than 80% of the employee's AWW as a direct result of the impairment from the compensable injury if the impairment from the compensable injury is a cause of the reduced earnings.

The hearing officer found that during the qualifying period for the first quarter the claimant had an ability to work, that the claimant failed to provide a narrative report from a doctor which specifically explained how the injury caused a total inability to work, that the claimant's unemployment was not a direct result of her impairment, and that the claimant did not make a good faith effort to obtain employment commensurate with her ability to work. The hearing officer concluded that the claimant is not entitled to SIBs for the first quarter.

Conflicting evidence was presented at the CCH. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. The Appeals Panel has noted that medical evidence from outside the qualifying period may be considered insofar as the hearing officer finds it probative of conditions in the qualifying period. Texas Workers' Compensation Commission Appeal No. 002219, decided November 2, 2000. We conclude that the hearing officer's decision is supported by sufficient evidence and that it is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **STATE OFFICE OF RISK MANAGEMENT (a self-insured governmental entity)** and the name and address of its registered agent for service of process is

For service in person the address is:

**RON JOSSELET, EXECUTIVE DIRECTOR
STATE OFFICE OF RISK MANAGEMENT
300 W. 15TH STREET
WILLIAM P. CLEMENTS, JR. STATE OFFICE BUILDING, 6TH FLOOR
AUSTIN, TEXAS 78701.**

For service by mail the address is:

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P.O. BOX 13777
AUSTIN, TEXAS 78711-3777.**

Robert W. Potts
Appeals Judge

CONCUR:

Michael B. McShane
Appeals Panel
Manager/Judge

Margaret L. Turner
Appeals Judge